

CHRISTOPHER CARDINAL, et al.,
Plaintiffs,
v.
JOHN LUPO, et al.,
Defendants.

Case No. 18-cv-00272-JCS

COURT'S PROPOSED VERDICT FORM

The Court's proposed verdict form is attached to this order. Any objections to this proposed verdict form must be raised at the hearing set for 3:00 PM on December 6, 2019.

IT IS SO ORDERED.

Dated: December 6, 2019

~~JOSEPH C. SPERO~~
Chief Magistrate Judge

COURT'S PROPOSED VERDICT FORM

We, the jury, unanimously find as follows:

PART A: BREACH OF CONTRACT—MR. LUPO'S CLAIM AGAINST MR. CARDINAL

1. John Lupo, Christopher Cardinal, and Kitchen Experts of California, Inc. entered a contract called the Stock Purchase Agreement. Did John Lupo do all, or substantially all, of the significant things that the contract required him to do?

Yes **No**

If your answer to Question 1 is “Yes,” do not answer Question 2, and instead continue to Question 3. If your answer to Question 1 is “No,” continue to Question 2.

- 2. Was John Lupo excused from having to do all, or substantially all, of the significant things that the contract required him to do?**

Yes No

If your answer to Question 2 is “Yes,” continue to Question 3. If your answer to Question 2 is “No,” do not answer any further questions in Part A, and instead continue to Part B.

- 3. Did Christopher Cardinal fail to do something that the contract required him to do?**

Yes No

If your answer to Question 3 is “Yes,” continue to Question 4. If your answer to Question 3 is “No,” do not answer any further questions in Part A, and instead continue to Part B.

- #### **4. Was John Lupo harmed by Christopher Cardinal's breach of contract?**

Yes No

If your answer to Question 4 is “Yes,” continue to Question 5. If your answer to Question 4 is “No,” do not answer any further questions in Part A, and instead continue to Part B.

- 5. What are John Lupo's damages for Christopher Cardinal's breach of contract?**

\$_____

Continue to Part B.

PART B: BREACH OF CONTRACT—KITCHEN EXPERTS' CLAIM

Begin Part B regardless of how you answered the earlier questions.

6. John Lupo, Christopher Cardinal, and Kitchen Experts of California, Inc. entered a contract called the Stock Purchase Agreement. Did Kitchen Experts of California, Inc. do all, or substantially all, of the significant things that the contract required it to do?

Yes No

If your answer to Question 6 is “Yes,” do not answer Question 7, and instead continue to Question 8. If your answer to Question 6 is “No,” continue to Question 7.

7. Was Kitchen Experts of California, Inc. excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to Question 7 is “Yes,” continue to Question 8. If your answer to Question 7 is “No,” do not answer any further questions in Part B, and instead continue to Part C.

- 8. Did John Lupo fail to do something that Section 4.7 (Non-Solicitation Covenant) of the contract required him to do?**

Yes No

If your answer to Question 8 is “Yes,” continue to Question 9. If your answer to Question 8 is “No,” do not answer any further questions in Part B, and instead continue to Part C.

- 9. Was Kitchen Experts of California, Inc. harmed by John Lupo's breach of contract?**

Yes No

If your answer to Question 9 is “Yes,” continue to Question 10. If your answer to Question 9 is “No,” do not answer any further questions in Part B, and instead continue to Part C.

- 10. What are Kitchen Experts of California, Inc.'s damages for John Lupo's breach of contract?**

\$_____

Continue to Part C.

1 **PART C: INTENTIONAL OR NEGLIGENT MISREPRESENTATION**

2 *Begin Part C regardless of how you answered the earlier questions.*

3 **11. Did John Lupo make a false representation to Christopher Cardinal?**

4 ____ Yes ____ No

5 *If your answer to Question 11 is "Yes," continue to Question 12. If your answer to Question 11 is*
6 *"No," do not answer any further questions in Part C, and instead continue to Part D.*

7 **12. Did John Lupo know that the representation was false, or did he make the**
8 **representation recklessly and without regard for its truth?**

9 ____ Yes ____ No

10 *If your answer to Question 12 is "Yes," do not answer Question 13, and instead continue to*
11 *Question 14. If your answer to Question 12 is "No," continue to Question 13.*

12 **13. Did John Lupo have reasonable grounds for believing the representation was**
13 **true when he made it?**

14 ____ Yes ____ No

15 *If your answer to Question 13 is "Yes," do not answer any further questions in Part C, and*
16 *instead continue to Part D. If your answer to Question 13 is "No," continue to Question 14.*

17 **14. Did John Lupo intend that Christopher Cardinal rely on the representation?**

18 ____ Yes ____ No

19 *If your answer to Question 14 is "Yes," continue to Question 15. If your answer to Question 14 is*
20 *"No," do not answer any further questions in Part C, and instead continue to Part D.*

21 **15. Did Christopher Cardinal reasonably rely on the representation?**

22 ____ Yes ____ No

23 *If your answer to Question 15 is "Yes," continue to Question 16. If your answer to Question 15 is*
24 *"No," do not answer any further questions in Part C, and instead continue to Part D.*

25 **16. Was Christopher Cardinal's reliance on John Lupo's representation a**
26 **substantial factor in causing harm to Christopher Cardinal??**

27 ____ Yes ____ No

28 *If your answer to Question 16 is "Yes," continue to Question 17. (Note that if your answer to*
29 *Question 16 is "Yes," you will not answer any questions in Part D.) If your answer to Question*

16 is “No,” do not answer any further questions in Part C, and instead continue to Part D.

17. What are Christopher Cardinal's damages as a result of John Lupo's false representation?

\$ _____

Look back at your answer to Question 12. If your answer to Question 12 is “Yes,” continue to Question 18. If your answer to Question 12 is “No,” do not answer any further question in Part C, and instead continue to Part E.

18. Did John Lupo make a false representation to Christopher Cardinal with malice, oppression, or fraud?

Yes No

If your answer to Question 18 is “Yes,” continue to Question 19. If your answer to Question 18 is “No,” do not answer any further questions in Part C, and instead continue to Part E.

19. What amount of punitive damages, if any, do you award Christopher Cardinal?

\$ _____

Continue to Part E.

PART D: BREACH OF CONTRACT—CHRISTOPHER CARDINAL'S CLAIM

Look back at Question 16 in Part C. If you answered “Yes” to Question 16, do not answer any questions in Part D, and instead continue to Part E. If you answered “No” to Question 16, or if you did not reach that question, begin Part D.

20. John Lupo, Christopher Cardinal, and Kitchen Experts of California, Inc. entered into a contract called the Stock Purchase Agreement. Did Christopher Cardinal do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to Question 20 is “Yes,” do not answer Question 21, and instead continue to Question 22. If your answer to Question 20 is “No,” continue to Question 21.

21. Was Christopher Cardinal excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to Question 21 is "Yes," continue to Question 22. If your answer to Question 21 is

1 “No,” do not answer any further questions in Part D, and instead continue to Part E.

- 2 **22. Did John Lupo fail to do something that Section 3.6 (Books of the**
3 **Corporation), Section 3.11 (No Violation of Statute or Breach of Contract),**
4 **Section 3.13 (Financial Information; Due Diligence Materials), Section 3.15**
5 **(Employee Classification), or Section 4.4 (Corporate Assets) of the contract**
6 **required him to do?**

7 Yes No

8 If your answer to Question 22 is “Yes,” continue to Question 23. If your answer to Question 22 is

9 “No,” do not answer any further questions in Part D, and instead continue to Part E.

- 10 **23. Was Christopher Cardinal harmed by John Lupo’s breach of contract?**

11 Yes No

12 If your answer to Question 23 is “Yes,” continue to Question 24. If your answer to Question 23 is

13 “No,” do not answer any further questions in Part D, and instead continue to Part E

- 14 **24. What are Christopher Cardinal’s damages for John Lupo’s breach of**
15 **contract?**

16 \$ _____

17 Continue to Part E.

PART E: COMPUTER FRAUD AND ABUSE ACT

Part E-1: Section 1030(a)(2)(C)

18 Begin Part E-1 regardless of how you answered the earlier questions.

- 19 **25. Did John Lupo intentionally access a computer without authorization or**
20 **exceed authorized access?**

21 Yes No

22 If your answer to Question 25 is “Yes,” continue to Question 26. If your answer to Question 25 is

23 “No,” do not answer any further questions in Part E, and instead continue to Part F.

- 24 **26. As a result of such access, did John Lupo obtain information from a**
25 **“protected computer”?**

26 Yes No

27 If your answer to Question 26 is “Yes,” continue to Question 27. If your answer to Question 26 is

28 “No,” do not answer any further questions in Part E-1, and instead continue to Part E-2.

1 **27. Did such conduct result in a “loss” to Kitchen Experts of California, Inc.**
2 **totaling at least \$5,000 in value during a one-year period?**

3 ____ Yes ____ No

4 *Continue to Part E-2.*

5 **Part E-2: Section 1030(a)(4)**

6 *Begin Part E-2 only if your answer to Question 25 in Part E-1 is “Yes.” If your answer to*
7 *Question 25 is “No,” do not answer any further questions in Part E, and instead continue to*
Part F.

8 **28. Did John Lupo intentionally access a “protected computer” without**
9 **authorization or exceed authorized access to a “protected computer”?**

10 ____ Yes ____ No

11 *If your answer to Question 28 is “Yes,” continue to Question 29. If your answer to Question 28 is*
12 *“No,” do not answer any further questions in Part E-2 or Part E-3, and instead continue to Part*
E-4.

13 **29. Did John Lupo do so knowingly and with the intent to defraud?**

14 ____ Yes ____ No

15 *If your answer to Question 29 is “Yes,” continue to Question 30. If your answer to Question 29 is*
16 *“No,” do not answer any further questions in Part E-2, and instead continue to Part E-3.*

17 **30. By accessing the “protected computer” or exceeding authorized access, did**
18 **John Lupo further the intended fraud?**

19 ____ Yes ____ No

20 *If your answer to Question 30 is “Yes,” continue to Question 31. If your answer to Question 30 is*
21 *“No,” do not answer any further questions in Part E-2, and instead continue to Part E-3.*

22 **31. Did John Lupo thereby obtain either (1) anything of value other than the use**
23 **of the computer; or (2) use of the computer, if such use was valued at more**
24 **than \$5,000 in any one-year period?**

25 ____ Yes ____ No

26 *Continue to Part E-3.*

27 **Part E-3: Section 1030(a)(5)(C)**

28 *Begin Part E-3 only if your answer to Question 28 in Part E-2 is “Yes.” If your answer to*
Question 28 is “No,” or if you did not reach Question 28, do not answer any questions in Part

1 || *E-3, and instead continue to Part E-4.*

32. Did John Lupo intentionally access a “protected computer” without authorization?

Yes No

If your answer to Question 32 is “Yes,” continue to Question 33. If your answer to Question 32 is “No,” do not answer any further questions in Part E-3, and instead continue to Part E-4.

33. As a result of such access, did John Lupo cause "damage," as that term is defined for the purpose of the Computer Fraud and Abuse Act?

Yes No

If your answer to Question 33 is “Yes,” continue to Question 33. If your answer to Question 33 is “No,” do not answer any further questions in Part E-3, and instead continue to Part E-4.

34. Did such damage result in a “loss” to Kitchen Experts of California, Inc. totaling at least \$5,000 in value during a one-year period?

Yes No

Continue to Part E-4.

Part E-4: Computer Fraud and Abuse Act Damages

Look back at your answers to Question 27, Question 30, Question 33. If you answered “Yes” to at least one of those questions, proceed to answer Question 35. If you did not answer “Yes” to any of those questions, do not answer Question 35, and instead continue to Part F.

35. What are Kitchen Experts of California, Inc.'s damages for John Lupo's violation of the Computer Fraud and Abuse Act?

\$

Continue to Part F.

PART F: SIGNATURE

Have the presiding juror sign and date this verdict form. After the presiding juror has signed and dated the verdict form, notify the courtroom deputy that you have reached a verdict.

Signed:

Presiding Juror

Dated: